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6 UNITED STATES DISTRICT COURT
7 EASTERN DISTRICT OF WASHINGTON

8 THE UNITED STATES OF
9 AMERICA, For the Use and
10 Benefit of CONTRACTORS
EQUIPMENT MAINTENANCE
COMPANY, INC., a Washington
corporation,

11 Plaintiff,

12 v.

13 BECHTEL HANFORD, INC., a
14 corporation; P.W. STEPHENS
CONTRACTORS, INC., a Missouri
15 corporation; ACSTAR
INSURANCE COMPANY, a
16 foreign corporation,

17 Defendants.

NO. CV-02-5006-RHW

**ORDER GRANTING DEFENDANT
BECHTEL HANFORD, INC.'S
MOTION FOR JUDGMENT**

18 Before the Court is Defendant Bechtel Hanford, Inc.'s Motion for Judgment (Ct.
19 Rec. 311). A telephonic hearing was held on March 14, 2006, in Spokane, Washington.
20 Defendant Bechtel Hanford, Inc. was represented by Linda Chu. Defendant Acstar
21 Insurance Co., and United Coastal Insurance Company was represented by Michael
22 Galletch.

23 **PROCEDURAL BACKGROUND**

24 On March 23, 2004, this Court entered judgment in favor of Defendant Bechtel
25 Hanford, Inc. ("BHI") against Defendants P.W. Stephens Contractors, Inc. (PWS),
26 Acstar Insurance Company (ACSTAR), and Contractors Equipment Maintenance Co.¹
27

28 ¹CEMC's claims were dismissed on the merits.

1 (Ct. Rec. 286). On April 22, 2004, ACTAR and PWS filed a Notice of Appeal (Ct. Rec.
2 287) (“Defendants Acstar Insurance Company and P.W. Stephens Contractors, Inc.
3 Appeal to the United States Court of Appeals for the Ninth Circuit the judgment entered
4 by the United States District Court . . . and all interlocutory orders that gave rise to that
5 judgment.”). The Circuit upheld the court’s award of damages and costs, but reversed
6 the Court’s ruling on attorney’s fees and prejudgement interest (Ct. Rec. 306).

7 In relation to the appeal, a Notice of Filing Undertaking to Stay Enforcement of
8 Money Judgment Pending Appeal was filed on June 9, 2004, by Dale Martin and
9 Michael Galletch, whose caption stated that they were attorneys for
10 Defendants/Appellants Acstar Insurance and P.W. Stephens Contractors, Inc. (Ct. Rec.
11 292). The Notice of Filing Undertaking contained the following language:

12 “[P]ursuant to Fed. R. Civ. P. 62(d) and Fed. R. of App. Pro 7 an
13 undertaking is being filed on behalf of Defendant Acstar Insurance Co. . . .
14 to stay the money Judgment for Bechtel Hanford, Inc. against P.W.
Stephens Contractors, Acstar Insurance Co. and Contractor’s Equipment
Maintenance Co. entered by the Court on May 23, 2004.

15 *Id.*

16 Attached to the Notice was a copy of the Supersedeas Bond on Appeal, which
17 was signed by Henry Nozko, Jr., President of Acstar Insurance Co., and David A. Price,
18 Attorney-in-fact for United Coastal Insurance Company. The Supersedeas Bond
19 contained the following language:

20 “We, Defendant/Appellant Acstar Insurance Co.)”Acstar”), an entity
21 incorporated in the State of New York, as Principal, and _____, an entity
22 incorporated in the State of _____, as Surety, are held and firmly bound
23 to Defendant Bechtel Hanford, Inc. Appellee under this instrument, for the
24 purpose of satisfying the Money Judgment, plus any costs, fees, and
25 statutory interest in the above-captioned case, in the amount of, and not to
26 exceed, One Million Four Hundred Twenty One Thousand Nine Hundred
27 Ninety Six Dollars and Eighty Cents (\$1,421,996.80), we bind ourselves,
28 our successor and assigns, jointly and severally.

WHEREAS, on the 23rd day of March 2004, in the above-captioned
matter, Defendant Bechtel Hanford was awarded judgment against Acstar
and Defendant P.W. Stephens Contractors in the total amount of
\$710,998.40;

WHEREAS, Actar has filed a Notice of Appeal sufficient to appeal
that judgment, among other orders of the trial court, to the United States
Court of Appeals for the Ninth Circuit;

NOW, THEREFORE, the condition of this obligation is such that if
Acstar shall pay all costs, fees, disbursements and judgments incurred by

1 reason of said appeal proceedings, then this obligation shall be null and
2 void and released, but otherwise to remain in full force and effect,
3 provided, however, that the maximum liability for the Surety shall not
exceed the sum of \$1,066,497.65.
(Ct. Rec. 292)

4 BHI now seeks judgment against United Coastal Insurance Company (UCIC),
5 surety on the Supersedeas Bond for Appeal, in the amount of \$727,818.95.
6

7 DISCUSSION

8 A. Court's Jurisdiction

9 Rule 65.1 provides in relevant part:

10 Whenever these rules . . . require or permit the giving of a security by a
11 party, and security is given in the form of a bond or stipulation or other
12 undertaking with one or more sureties, each surety submits to the
13 jurisdiction of the court and irrevocably appoints the clerk of the court
14 as the surety's agent upon whom any papers affecting the surety's
liability on the bond or undertaking may be served. The surety's liability
may be enforced on motion without the necessity of an independent
action. The motion and such notice of the motion as the court prescribes
may be served on the clerk of the court, who shall forthwith mail copies
to the sureties if their addresses are known.

15 Fed. R. Civ. P. 65.1. Therefore, the Court has jurisdiction and the authority to enter an
16 order enforcing UCIC's liability.

17 B. Contract Interpretation

18 The pivotal question for the Court is one of contract interpretation. Federal
19 courts look to state law to construe common law surety contracts. *Mai Steel Serv., Inc.*
20 *v. Blake Constr. Co.*, 981 F.2d 414, 420 (9th Cir. 1992). Under Washington law,
21 "suretyship is a consensual and contractual relationship and is generally subject to the
22 same rules applicable to simple contract law." *National Bank of Washington v. Equity*
23 *Investors*, 86 Wash. 2d 545, 546 (1976). In general, "the liability of a surety is
24 measured by the terms of [the] agreement." *King Equipment Co. v. R.N. & L. Corp.*, 1
25 Wash.App. 487, 491 (1969). "In construing what legal obligations are imposed by
26 language of a specific instrument, the objective meaning of the language determines
27 liability." *National Bank of Washington*, 86 Wash. 2d. at 445.

28 "In construing a written contract, the basic principles require that (1) the intent of

1 the parties controls; (2) the court ascertains the intent from reading the contract as a
2 whole; and (3) a court will not read an ambiguity into a contract that is otherwise clear
3 and unambiguous.” *Mayer v. Pierce County Med. Bureau*, 80 Wash.App. 416, 420, 909
4 P.2d 1323 (1995). Contract interpretation is only a question of law when “(1) the
5 interpretation does not depend on the use of extrinsic evidence, or (2) only one
6 reasonable inference can be drawn from the extrinsic evidence.” *Tanner Elec. Corp. v.*
7 *Puget Sound Power & Light Co.*, 128 Wash.2d 656, 674 (1996). A contract is
8 ambiguous if its terms are uncertain or they are subject to more than one meaning.
9 *Mayer*, 80 Wash.App. at 421.

10 Here, at the hearing, the parties agreed that the proper course of action for the
11 Court to take is to first determine whether the Supersedeas Bond on Appeal is
12 unambiguous based on three documents that are part of the Court Record: the Judgment
13 (Ct. Rec. 286), the Notice of Filing Undertaking to Stay Enforcement of Money
14 Judgment Pending Appeal and Supersedeas Bond on Appeal (Ct. Rec. 292) and the
15 Notice of Appeal (Ct. Rec. 287).

16 Taken together, the Court concludes that these documents unambiguously hold
17 that the Supersedeas Bond filed in this action covers the liability of PWS. The
18 judgment against ACSTAR and PWS was awarded severally; attorney’s fees were
19 awarded jointly and severally; costs and expenses were awarded jointly and severally;
20 and prejudgment interest was awarded jointly and severally. It is clear that the appeal to
21 the Ninth Circuit was filed on behalf of both ACSTAR and PWS. The Supersedeas
22 Bond was filed to effect the stay of the Judgment against both BHI and PWS. Likewise,
23 both parties were represented by the same lawyers on appeal. All three documents
24 construed together establish that the judgement against PWS had been stayed by the
25 filing of the Supersedeas Bond. If during the duration of the appeal, BHI attempted to
26 collect judgment against PWS, it would have been prohibited by the Notice of Filing
27 Undertaking to Stay Enforcement of Money Judgment Pending Appeal and Supersedeas
28 Bond on Appeal. The Bond covers Bechtel’s judgement against PWS.

Accordingly, **IT IS HEREBY ORDERED:**

1. Defendant Bechtel Hanford, Inc.'s Motion for Judgment (Ct. Rec. 311) is **GRANTED.**

2. Defendant Bechtel Hanford, Inc.'s Motion for Hearing (Ct. Rec. 308) is **GRANTED.**

3. Defendant Bechtel Hanford, Inc. is entitled to recover from UCIC the sum of \$727,818.95, plus \$22.99 per diem after March 23, 2006. After payment of the said Judgment, UCIC is discharged from all liability on the Bond.

4. The District Court Executive is directed to enter judgment in favor of Defendant Bechtel Hanford, Inc.

IT IS SO ORDERED. The District Court Executive is directed to enter this order and to provide copies to counsel.

DATED this 20th day of March, 2006.

s/ Robert H. Whaley

ROBERT H. WHALEY
Chief United States District Judge

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